

CALIFORNIA CODES

**EDUCATION CODE**

**SECTION 49430-49436**

**49430.** As used in this article, the following terms have the following meanings:

(a) "Elementary school" means a public school that maintains any grade from kindergarten to grade 6, inclusive, but no grade higher than grade 6.

(b) "Middle school" means a public school that maintains grade 7 or 8, 7 to 9, inclusive, or 7 to 10, inclusive.

(c) "High school" means a public school maintaining any of grades 9 to 12, inclusive.

(d) "Full meal" means a combination of food items that meet USDA-approved School Breakfast Program or National School Lunch Program meal pattern requirements or the menu planning options of Shaping Health as Partners in **Education** developed by the state (SHAPE California network).

(e) "Added sweetener" means an additive other than 100 percent fruit juice that enhances the sweetness of a beverage.

(f) "Sold" means the exchange of food for money, coupons, or vouchers.

(g) "Entree" means a food that is generally regarded as being the primary food in a meal, and shall include, but not be limited to, sandwiches, burritos, pasta, and pizza.

(h) "Snack" means a food that is generally regarded as supplementing a meal, including, but not limited to, chips, crackers, onion rings, nachos, french fries, donuts, cookies, pastries, cinnamon rolls, and candy.

(i) "Deep fried" means a food item is cooked by total submersion in oil or fat.

(j) "Par fried" means a food item is fried to reach an internal temperature of 160 degrees Fahrenheit then is cooled to room temperature so that it may be refrigerated or frozen for future frying.

(k) "Flash fried" means a food item is quickly fried on both sides in oil with a temperature of 400 degrees Fahrenheit or higher.

**49430.3.** Notwithstanding any provisions of law, including, but not limited to, Chapter 3 (commencing with Section 38080) of Part 23 or Section 48931, this article shall control over contrary provisions relating to the sale of food items to public school pupils.

**49430.5.** (a) The reimbursement a school receives for free and reduced price meals sold or served to pupils in elementary, middle, or high schools included within a school district, charter school, or county office of **education** shall be twenty-one cents (\$0.21).

(b) To qualify for the reimbursement for free and reduced price meals provided to pupils in elementary, middle, or high schools, a school shall follow the Enhanced Food Based Meal Pattern, Nutrient Standard Meal Planning, or Traditional Meal Pattern developed by the United States Department of Agriculture or the SHAPE Menu Patterns developed by the state.

(c) The reimbursement rates set forth in this section shall be adjusted annually for increases in cost of living in the same manner set forth in Section 42238.1.

**49430.7.** (a) For purposes of this section, the following terms have the following meanings:

(1) "School" means a school operated and maintained by a school district or county office of **education**, or a charter school.

(2) "School district" means a school district, charter school, or county office of **education**.

(3) "Child development program" means a program operated pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1.

(b) As a condition of receipt of funds pursuant to Section **49430.5**, commencing with the 2007-08 fiscal year, for meals and food items sold as part of the free and reduced-price meal programs, a school or school district shall comply with all of the following requirements and prohibitions:

(1) Follow the United States Department of Agriculture (USDA) nutritional guidelines or the menu planning options of Shaping Health as Partners in **Education** developed by the state (SHAPE California network).

(2) Not sell or serve a food item that has in any way been deep fried, par fried, or flash fried by a school or school district.

(3) Not sell or serve a food item containing artificial trans fat. A food item contains artificial trans fat if it contains vegetable shortening, margarine, or any kind of hydrogenated or partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 gram per serving.

(4) Not sell or serve a food item that, as part of the manufacturing process, has been deep fried, par fried, or flash fried in an oil or fat that is prohibited by this paragraph. Oils and fats prohibited by this paragraph include, but are not limited to, palm, coconut, palm kernel, lard, typically solid at room temperature and are known to negatively impact cardiovascular health. Oils permitted by this paragraph include, but are not limited to, canola, safflower, sunflower, corn, olive, soybean, peanut, or a blend of these oils, typically liquid at room temperature and are known for their positive cardiovascular benefit.

(c) Commencing with the 2007-08 fiscal year, for meals and food items sold as part of the free and reduced-price meal programs, a child development program is encouraged to comply with all of the following guidelines:

(1) Meet developmentally and programmatically appropriate meal pattern and meal planning requirements developed by the USDA or menu planning options of Shaping Health as Partners in **Education** developed by the state (SHAPE California network).

(2) Not sell or serve a food item that has in any way been deep fried, par fried, or flash fried by a school, school district, or child development program.

(3) Not sell or serve a food item containing artificial trans fat. A food item contains artificial trans fat if it contains vegetable shortening, margarine, or any kind of hydrogenated or partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 gram per serving.

(4) Not sell or serve a food item that, as part of the manufacturing process, has been deep fried, par fried, or flash fried in an oil or fat prohibited by this paragraph. Oils and fats prohibited by this paragraph include, but are not limited to, palm, coconut, palm kernel, lard, typically solid at room temperature and are known to negatively impact cardiovascular health. Oils permitted by this provision include, but are not limited to, canola, safflower, sunflower, corn, olive, soybean, peanut, or a blend of these oils,

typically liquid at room temperature and are known for their positive cardiovascular benefit.

(d) The prohibitions and requirements of this section regarding food items sold or served by a school or school district apply to raw bulk USDA commodity foods ordered by schools or school districts and sent to commercial processors for conversion into ready to use end products, but do not apply to other USDA commodity foods until the scheduled 2009 reauthorization of the USDA National School Lunch Program is complete or ingredient and nutrition information is available for all USDA commodity foods, whichever is earlier.

(e) As a condition of receipt of funds pursuant to Section **49430.5**, by no later than June 30, 2008, and annually thereafter, schools and school districts shall provide the department with an annual certification of compliance with the provisions of this section.

(f) This section shall become operative only upon an appropriation for its purposes in the annual Budget Act or another statute.

49431. (a) (1) Commencing July 1, 2007, at each elementary school, the only food that may be sold to a pupil during the school day are full meals and individually sold portions of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruit, vegetables that have not been deep fried, and legumes.

(2) An individually sold dairy or whole grain food item may be sold to pupils at an elementary school, except food sold as part of a USDA meal program, if it meets all of the following standards:

(A) Not more than 35 percent of its total calories shall be from fat.

(B) Not more than 10 percent of its total calories shall be from saturated fat.

(C) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugar.

(D) Not more than 175 calories per individual food item.

(b) An elementary school may permit the sale of food items that do not comply with subdivision (a) as part of a school fundraising event in any of the following circumstances:

(1) The items are sold by pupils of the school and the sale of those items takes place off of and away from school premises.

(2) The items are sold by pupils of the school and the sale of those items takes place at least one-half hour after the end of the

school day.

(c) It is the intent of the Legislature that the governing board of a school district annually review its compliance with the nutrition standards described in this section and Section 49431.5.

49431.2. (a) Commencing July 1, 2007, snacks sold to a pupil in middle, junior, or high school, except food served as part of a USDA meal program, shall meet all of the following standards:

(1) Not more than 35 percent of its total calories shall be from fat. This paragraph does not apply to the sale of nuts, nut butters, seeds, eggs, cheese packaged for individual sale, fruits, vegetables that have not been deep fried, or legumes.

(2) Not more than 10 percent of its total calories shall be from saturated fat. This subparagraph does not apply to eggs or cheese packaged for individual sale.

(3) Not more than 35 percent of its total weight shall be composed of sugar, including naturally occurring and added sugars. This paragraph does not apply to the sale of fruits or vegetables that have not been deep fried.

(4) No more than 250 calories per individual food item.

(b) Commencing July 1, 2007, entree items sold to a pupil in middle, junior, or high school, except food served as part of a USDA meal program, shall contain no more than 400 calories per entree, shall contain no more than 4 grams of fat per 100 calories contained in each entree, and shall be categorized as entree items in the School Breakfast Program or National School Lunch Program.

(c) A middle, junior, or high school may permit the sale of food items that do not comply with subdivision (a) or (b) in any of the following circumstances:

(1) The sale of those items takes place off of and away from school premises.

(2) The sale of those items takes place on school premises at least one-half hour after the end of the school day.

(3) The sale of those items occurs during a school-sponsored pupil activity after the end of the school day.

(d) It is the intent of the Legislature that the governing board of a school district annually review its compliance with the nutrition standards described in this section.

49431.5. (a) (1) Regardless of the time of day, only the following beverages may be sold to a pupil at an elementary school:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener.

(C) Drinking water with no added sweetener.

(D) Two-percent-fat milk, one-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk.

(2) An elementary school may permit the sale of beverages that do not comply with paragraph (1) as part of a school fundraising event in any of the following circumstances:

(A) The items are sold by pupils of the school and the sale of those items takes place off and away from the premises of the school.

(B) The items are sold by pupils of the school and the sale of those items takes place one-half hour or more after the end of the schoolday.

(3) From one-half hour before the start of the schoolday to one-half hour after the end of the schoolday, only the following beverages may be sold to a pupil at a middle or junior high school:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener.

(C) Drinking water with no added sweetener.

(D) Two-percent-fat milk, one-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk.

(E) An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

(4) A middle or junior high school may permit the sale of beverages that do not comply with paragraph (3) as part of a school event if the sale of those items meets all of the following criteria:

(A) The sale occurs during a school-sponsored event and takes place at the location of that event at least one-half hour after the end of the schoolday.

(B) Vending machines, pupil stores, and cafeterias are used later than one-half hour after the end of the schoolday.

(5) This subdivision does not prohibit an elementary, or middle or junior high school from making available through a vending machine any beverage allowed under paragraph (1) or (3) at any time of day, or, in middle and junior high schools, any beverage that does not comply with paragraph (3) if the beverage only is available not later

than one-half hour before the start of the schoolday and not sooner than one-half hour after the end of the schoolday.

(b) (1) Commencing July 1, 2007, no less than 50 percent of all beverages sold to a pupil from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday shall be those enumerated by paragraph (3).

(2) Commencing July 1, 2009, all beverages sold to a pupil from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday shall be those enumerated by paragraph (3).

(3) Beverages allowed under this subdivision are all of the following:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and have no added sweetener.

(B) Vegetable-based drinks that are composed of no less than 50 percent vegetable juice and have no added sweetener.

(C) Drinking water with no added sweetener.

(D) Two-percent-fat milk, one-percent-fat milk, nonfat milk, soy milk, rice milk, and other similar nondairy milk.

(E) An electrolyte replacement beverage that contains no more than 42 grams of added sweetener per 20-ounce serving.

(c) For the purposes of this section, the following terms have the following meanings:

(1) "Added sweetener" means any additive that enhances the sweetness of the beverage, including added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(2) "Sale of beverages" means the exchange of a beverage for money, coupons, or vouchers.

(d) It is the intent of the Legislature that the governing board of a school district annually review its compliance with this section.

(e) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20, compliance with this section may not be waived.

49431.7. (a) Commencing on July 1, 2009, a school or school district, through a vending machine or school food service establishment during school hours and one-half of an hour before and after school hours, shall not make available to pupils enrolled in kindergarten, or any of grades 1 to 12, inclusive, food containing artificial trans fat, as defined in subdivision (b), or use food

containing artificial trans fat in the preparation of a food item served to those pupils.

(b) For purposes of this section, a food contains artificial trans fat if a food contains vegetable shortening, margarine, or any kind of partially hydrogenated vegetable oil, unless the manufacturer's documentation or the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as less than 0.5 grams of trans fat per serving.

(c) For purposes of this section, "school food service establishment" means a place that regularly sells or serves a food item or meal on a school campus.

(d) This section does not apply to food provided as part of a USDA meal program.

49432. By January 1, 2004, every public school may post a summary of nutrition and physical activity laws and regulations, and shall post the school district's nutrition and physical activity policies, in public view within all school cafeterias or other central eating areas. The State Department of **Education** shall develop the summary of state law and regulations.

49433. (a) A school district maintaining at least one elementary or middle school or high school that is participating in the pilot program pursuant to Section 49433.7 may convene a Child Nutrition and Physical Activity Advisory Committee that shall develop and recommend to the governing board of the school district for its adoption, school district policies on nutrition and physical activity. The committee shall include, but need not be limited to, school district governing board members, school administrators, food service directors, food service staff, parents, pupils, physical and health **education** teachers, dietitians, health care professionals, and interested community members. In developing the policy, the committee shall hold at least one public hearing.

(b) The policies shall address issues and goals, including, but not limited to, all of the following:

(1) Implementing the nutritional standards set forth in Section 49431.

(2) Encouraging fundraisers that promote good health habits and discouraging fundraisers that promote unhealthy foods.

(3) Ensuring that no pupil is hungry.



(4) Improving nutritional standards.

(5) Increasing the availability of fresh fruits and vegetables, including provisions that encourage schools to make fruits and vegetables available at all locations where food is sold.

(6) Ensuring, to the extent possible, that the food served is fresh.

(7) Encouraging eligible pupils to participate in the school lunch program.

(8) Integrating nutrition and physical activity into the overall curriculum.

(9) Ensuring regular professional development for food services staff.

(10) Ensuring pupils a minimum of 30 minutes to eat lunch and 20 minutes to eat breakfast, when provided.

(11) Ensuring pupils engage in healthful levels of vigorous physical activity.

(12) Ensuring pupils receive nutrition **education**.

(13) Improving the quality of physical **education** curricula and increasing training of physical **education** teachers.

(14) Enforcing existing physical **education** requirements.

(15) Altering the economic structures in place to encourage healthy eating by pupils and reduce dependency on generating profits for the school from the sale of unhealthy foods.

(16) Developing a financing plan to implement the policies.

(17) Increasing the availability of organic fruits and vegetables and school gardens.

(18) Collaborating with local farmers' markets.

(c) A school district maintaining at least one elementary or middle school may apply to the State Department of **Education** for a grant to offset the costs of developing and adopting policies pursuant to this section. The grants shall be one-time grants and shall be available to applicant school districts by March 1, 2002.

(d) A participating school district shall receive a grant of no less than four thousand dollars (\$4,000) and no more than twenty-five thousand dollars (\$25,000), depending upon the size of the school district, for the purpose of offsetting the costs of developing the school district nutrition and physical activity policies.

49433.5. The State Department of **Education** shall provide technical support and assistance to school districts in implementing Section 49433. The technical support and assistance shall include, but need

not be limited to, highlighting model nutrition programs, disseminating information to assist in the financial management of the food service programs, identifying fundraising mechanisms for school food services programs and for pupil activities that encourage healthy eating habits among pupils, and providing information regarding the current best practices in school child nutrition programs.

49433.7. The State Department of **Education** shall establish a three-year pilot program in which a total of not less than 10 high schools, middle schools, or any combination thereof, that apply are selected to participate. Although the selection process shall be essentially random, the selection process shall be weighted so that the pilot program contains participants that, as a group, are representative of the geographic diversity of the state. The pilot program shall commence in the fall of the 2002-03 school year. Participating districts will be eligible to receive a grant pursuant to subdivision (c) of Section 49433. Districts will be eligible for an increased reimbursement rate for free and reduced price meals served at participating high schools as set forth in Section **49430.5**.

49433.9. A school district participating in the pilot program shall adopt the provisions of Section 49433 and shall comply with all of the following requirements:

(a) (1) No beverage other than any of the following shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday:

(A) Fruit-based drinks that are composed of no less than 50 percent fruit juice and that have no added sweeteners.

(B) Drinking water.

(C) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(D) Electrolyte replacement beverages that do not contain more than 42 grams of added sweetener per 20 ounce serving.

(2) No carbonated beverage shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday.

(3) (A) Except as set forth in subparagraph (B), no beverage that exceeds 12 ounces per serving shall be sold to pupils from one-half

hour before the start of the schoolday until one-half hour after the end of the schoolday.

(B) The 12-ounce maximum serving requirement does not apply to any of the following:

(i) Drinking water.

(ii) Milk, including, but not limited to, chocolate milk, soy milk, rice milk, and other similar dairy or nondairy milk.

(iii) An electrolyte replacement beverage that does not exceed 20 ounces per serving.

(4) For the purposes of this subdivision, "added sweetener" means any additive that enhances the sweetness of the beverage, including, but not limited to, added sugar, but does not include the natural sugar or sugars that are contained within the fruit juice which is a component of the beverage.

(b) No food item shall be sold to pupils from one-half hour before the start of the schoolday until one-half hour after the end of the schoolday unless it meets all of the standards set forth in subparagraphs (A) to (C), inclusive, of paragraph (2) of subdivision (a) of Section 49431.

(c) Entree items and side dish serving sizes shall be no larger than the portions of those foods served as part of the federal school meal program.

(d) Fruit and nonfried vegetables shall be offered for sale at any location where food is sold.

49434. (a) The Superintendent may monitor school districts for compliance with this article as set forth in subdivision (b).

(b) Each school district monitored pursuant to subdivision (a) shall report to the Superintendent in the coordinated review effort regarding the extent to which it has complied with this article.

(c) A school district that the Superintendent finds to be noncompliant with the mandatory provisions of this article shall adopt, and provide to the Superintendent, a corrective action plan that sets forth the actions to be taken by the school district to ensure that the school district will be in full compliance, within a time agreed upon between the Superintendent and the school district that does not exceed one year.

49435. The State Department of **Education**, with advice from the

Child Nutrition Advisory Council, shall design and implement a financial incentive grant program to help and encourage schools to implement the school district policies and meet the goals described in subdivision (b) of Section 49433.

49436. The department shall monitor the implementation of Sections 49431, 49433, 49433.5, 49433.7, and 49433.9 and shall report to the Legislature by May 1, 2005, its evaluation of all of the following:

(1) The fiscal impact of the policies and standards developed by school districts.

(2) The effect of this article upon school districts and pupils, including an assessment of pupil responses and related findings.

(3) Recommendations for improvements or additions.

(4) The resulting changes in food and beverage sales at schools.